

**BOROUGH OF WESTWOOD
ZONING BOARD OF ADJUSTMENT
REGULAR MEETING
MINUTES
June 7, 2010**

APPROVED 7/12/10

1. OPENING OF THE MEETING

The meeting was called to order at approximately 8:00 p.m.

Open Public Meetings Law Statement:

This meeting, which conforms with the Open Public Meetings Law, Chapter 231, Public Laws of 1975, is a Regular Meeting of the Westwood Zoning Board.

Notices have been filed with our local official newspapers and posted on the municipal bulletin board.

2. PLEDGE OF ALLEGIANCE

3. ROLL CALL:

PRESENT: Eric Oakes
Michael Bieri
Raymond Arroyo, Vice-Chairman
William Martin, Chairman
Robert Bicocchi
Christopher Owens
Guy Hartman
Vernon McCoy (Alt #1)
Matthew Ceplo (Alt. #2)

ALSO PRESENT: David Rutherford, Esq., Board Attorney
Louis Raimondi, Brooker Engineering,
Board Engineer
Steve Lydon, Burgis Associates,
Board Planner

ABSENT: None

4. MINUTES - The Minutes of 5/3/10 and 5/10/10 were approved as amended on motions made, seconded and carried on roll call vote.

5. CORRESPONDENCE:

(WWZB 6/7/10)

1. Letter dated 4/28/10 from Burgis Associates RE: Retro Fitness, 25 Sullivan Street;

2. Letter dated 4/26/20 from Brooker Engineering RE: Retro Fitness, 25 Sullivan Street;

6. **VOUCHERS:** A motion to approve Vouchers totaling \$3,716.25 was made by Mr. Bicocchi, seconded by Mr. Bieri, and carried unanimously on roll call vote.

7. **RESOLUTIONS:**

1. **Pompilio's Pizza, Inc., 221-223 Westwood Ave. - Variance for Expansion** - (Steve Lydon recused; David Spatz appeared as Substitute Planner) - **Resolution of Approval scheduled for memorialization on 7/12/10;**

8. **PENDING NEW BUSINESS:**

1. **Kim -663 Ackerman Avenue - Variance** - Scheduled for 7/12/10;

2. **Olivier - 174 Third Avenue - Variance** - Scheduled for 7/12/10;

9. **VARIANCES, SUBDIVISIONS AND/OR SITE PLANS, APPEALS, INTERPRETATIONS:**

SWEARING IN OF BOARD PROFESSIONALS FOR PUBLIC HEARINGS
The Board Professionals were sworn in.

1. **New St. Mark AME Zion Church, 100 Palisade Avenue - Minor site Plan application** - Adjourned to 7/12/10 at the request of applicant; however, Mr. Martin asked Mr. Berkoben to come forward to give the status of the application, since it has been pending for a year. Mr. Berkoben advised he was awaiting documentation, and Mr. Martin stated if they are not ready, the Board may dismiss the application without prejudice. The Board discussed the notice being carried and noted there was no issue with time, since they have not commenced the application.

2. **Keynton, 27 Hillside Avenue - Variance application** - Carried to 7/12/10 at the request of the applicant;

(WWZB 6/7/10)

Chairman Martin commented the application was incomplete. Mr. Berkoben came forward and stated they were requesting a waiver for a topographical survey, and they would be complete if the Board accepted same. The Chairman addressed the items of completeness in order for the application to be heard or not and called upon Mr. Raimondi, who stated the plan does not show the proposed addition. The photos show the patio. Mr. Berkoben said they were placing a prefabricated enclosure upon the patio and briefly addressed the Burgis completeness memo. Mr. Berkoben stated what they submitted was not acknowledged. Mr. Martin noted they are requesting waivers from several Checklist items. The Board needs to have documents upon which to base a decision. We need a site plan with the addition drawn on it. Mr. Berkoben stated they submitted a survey, which Mr. Raimondi had. It did not say there was an addition, just a concrete patio. Mr. Rutherford advised that Mr. Lydon reviewed this application on many occasions, and on 5/24/10 sent a list of items outstanding, which the Board should address item by item.

The applicant was asking for a waiver of the requirement of item #3, providing a zoning table. A motion to deny the request was made by Mr. Oakes, seconded by Mr. Bieri and carried unanimously on roll call vote.

The Board discussed Item #6 and agreed the topo was not necessary, but the Board needs a site plan with dimensions. Mr. Martin advised the plans for interior layout #7, were accepted. Mr. Raimondi advised the surveyor that prepared the survey would be eligible to do the site plan to show the proposed dimensions and offsets of the building. Mr. Martin commented the surveyor can add it right onto the survey. He cannot give elevations or grades, but the Board waived that. Mr. Berkoben thanked the Board, and the matter was carried to 7/12/10. Applicant is to provide additional documentation as discussed. Mr. Berkoben granted an extension of time.

3. Fahie, 60 Westwood Boulevard - Application for Certificate of Non-conforming Use - L. Scott Berkoben, Esq. represented the applicant in a Section 68 application. Mrs. Fahie, Leon Brown and Joe Green, of Westwood Boulevard, were sworn in. The buildings were burned down at one time, they testified. Mr. Martin asked if there was any documentation that the house was rebuilt, but applicants responded no. Joe Green gave the history of the property. The house has been used as a

(WWZB 6/7/10)

two-family for over 50 years. There were no questions of the witnesses. The matter was carried to 7/12/10 so that Mr. Huntington can provide a written statement regarding the driveway, particularly how their driveway came to be on the Borough's property.

The Board took a recess from 9:00 to 9:10 p.m.

4. Porqui Pas, 31 Westwood Avenue - Appeal/Variance Application - Carried to 7/12/10 at the request of the applicant;

5. Apovia Westwood LLC, 224 3rd Avenue - Variance - Withdrawn by letter of Anthony DeCandia, Esq.

6. CVS, 289 Broadway - Application for Development (5/10/10 Special Meeting) (Christopher Owens recused) - Carmine R. Alampi, Esq. represented the applicant and reviewed from the prior hearings. Christopher Owens recused himself and stepped down from the dais. Mr. Alampi recalled the Board's traffic safety issues, and the expert agreed it could create an ingress only single lane drive-through with the ability to queue 2 or 3 vehicles. David Caruso was present to give a presentation and highlight the change.

John Lamb, Esq. came forward, representing First Westwood Realty Group. Mr. Meisel was in favor of the application, but wanted to make sure there were no conflicts of interest with the professionals. He stated that Mr. Lydon always recuses himself when Mr. Meisel is part of the proceedings, and he should recuse himself, as the application may be tainted. Mr. Martin said Mr. Meisel was not a party of the application.

Mr. Rutherford asked Mr. Alampi to advise as to his position. Mr. Alampi advised he met with Mr. Meisel as a property owner with respect to garbage containers, and he filed a notice to property owners within 200', enlarging the circle of residents to include the adjacent property. He consulted with Mr. Lamb, and Mr. Meisel is a principal in a different entity, which is the landlord to the Burgis Associates offices. He would defer to the Board. He understands in the past cases, i.e., Mr. Meisel's realty companies, that Burgis Associates was recused, but he would not want this application to go so far and be tainted. Mr. Alampi stated this with all due respect to Mr.

(WWZB 6/7/10)

Lydon and the Burgis firm. He would have to research this further.

Mr. Martin commented he thought this was addressed at the beginning at the application, and now, at the last minute, this is being proposed. Mr. Lamb said he thought Mr. Spatz was going to be present. Mr. Rutherford stated Mr. Spatz was never mentioned once in this hearing. Mr. Lamb thought there was a conversation after the hearing about this. Mr. Lamb felt we cannot have a potential problem, and in every application that Mr. Meisel appeared, Mr. Lydon has always recused himself. Mr. Martin said we have had Mr. Meisel testify on many applications over the years, and we have not had to have our planner step down. Mr. Arroyo recalled Mr. Meisel testifying, and here he does not have any problem with Mr. Lydon remaining. Mr. Rutherford advised he did not pick up any issues of this magnitude in any potential conversation, but asked Mr. Lamb if his position is that whenever Mr. Meisel testifies, Mr. Lydon is required to recuse himself. Mr. Lamb confirmed his position. So, Mr. Rutherford continued, then at this latest hour in the application when the Board is ready to deliberate, you are introducing this issue.

Mr. Rutherford asked Mr. Alampi if he was comfortable proceeding. Mr. Alampi advised Mr. Meisel is not the applicant. He is certainly supportive of the application, but he is not quite clear that there is an issue. However, he would want to make certain there is not an issue. This application has almost come to a conclusion. He is not aware of any conflict, but it is an issue that could be resolved, and they need to move on. They have witnesses from out-of-State. To answer the question, especially when proposed by another attorney for which he has the highest regard raises an issue, he would say he is concerned and will pay attention. But he is not convinced it is problematic, and in discussion with his client, they are ready to proceed and do not really want to cause any further delay, and he has no reservation with the Burgis firm. There is a contractual business relationship with Mr. Lydon's employer, not with Mr. Lydon. If the Board has dealt with this before, he would be included to comply with past practice.

Mr. Martin commented we did not know this was coming tonight. Mr. Rutherford advised we should proceed if the applicant is desirous, and Mr. Meisel has the right to be heard. Mr. Alampi could take the month to do research. Mr. Meisel said

(WWZB 6/7/10)

he does not want to inconvenience everyone. He is just an adjacent property owner. If everyone is in agreement, he will go along. Mr. Lamb stated if no one else has any objection, we want the vote tonight. Mr. Rutherford said the only way we will have a vote tonight is with a planner. Mr. Martin commented now that the issue is raised, if you want to push the issue, he is concerned if we proceed under these circumstances, we may be leaving ourselves legally vulnerable. Mr. Lamb cited the Sugarman case, and he and Mr. Meisel suggested if no one in the audience has an objection they could proceed.

Mr. Rutherford and Mr. Martin said an objector cannot be precluded from appealing the decision. Mr. Rutherford did not recall having a substitute planner when Mr. Meisel was simply a witness and would also defer to the Board. Mr. Arroyo felt that the issue has been raised, and this has been ongoing and would have implication on many cases before both the Boards. This is something that should be researched, resolved and settled once and for all so there is no cloud over our proceedings when our planner is representing us, and Mr. Meisel is before the Board as a witness or an applicant. We should go to the direct testimony. Mr. Martin asked if we could hold the issue pending Mr. Rutherford's research and opinion, while we continue with the witnesses.

Mr. Alampi stated finally he represents the applicant, not Mr. Lamb. He did not raise this issue and did not indicate there was a conflict of issue, but he did not know enough about the facts to draw a conclusion. It certainly makes sense to say we are not going to come to a conclusion tonight. Regardless of whether the application was controversial or non-controversial, this would not have a bearing on whether or not the planner should be recused.

Thomas Wanner from the audience came forward and objected to the Board proceeding with a planner that is in question. Mr. Rutherford advised this is a legal analysis, and the point is well taken. Mr. Alampi had maybe ten minutes worth of testimony remaining. This was just to qualify their planner. Mr. Rutherford advised they could proceed in that regard.

David Caruso, Site Engineer, continued under oath. He testified he was caused to make a revision to the Site Plan, dated 5/19/10. He provided an updated Stormwater Management

(WWZB 6/7/10)

Memo, marked A20, and the Traffic Impact Statement, marked A22s and mounted the latest Site Plan on the board. The Revised Engineering Site Plan, consisting of 19 sheets, was revised to 5/25/10 and was on file 10 days prior to the hearing. This exhibit was marked A22. The changes on the plan were that the curb cut on Broadway is an ingress only. The canopy was moved North to allow a three (3) car stack at the drive-through window. Software in the traffic engineering industry was used.

The exhibit on the board entitled, "View of Vehicle Drive-Through Stacking" was marked A23. Mr. Raimondi commented the plan should be presented to the Board with the dimensions of the cars and distances between them. He asked Mr. Caruso if he could move it up 5-6' to allow the 4th car to get around the 3rd car. Mr. Raimondi asked for a right-in/right-out at Jefferson. Mr. Caruso stated the applicant would be applying for a full curb cut. He was concerned about cars coming off Jefferson making a left into the driveway and coming out making a left into Jefferson. Mr. Caruso stated at times of peak hours, there is a potential for problems.

Mr. Arroyo asked if this plan triggered additional site standard waivers. Mr. Caruso said they provided this design based on what they could accommodate. Mr. Lydon commented the Borough does not have standards for this and does not have any standards, except for those specific to banks. Mr. Arroyo asked if there was a standard about queuing in the front yard. Mr. Alampi commented here it is a drive-through and a bypass lane. Mr. Lydon commented it would not apply even if it were not a bank because we do allow driveways. Mr. Arroyo continued with questioning. Mr. Lydon questioned the witness about the number of cars queuing. Mr. McKoy asked and Mr. Rutherford advised if approved and the applicant is not satisfied with what was approved, they could have to come back before the Zoning Board for any significant changes.

Mr. Martin questioned Mr. Caruso stating they are too far off on one side, and they tend to be lining up directly behind each other, so it may cause a vehicle to block the driveway. Mr. Caruso said they could transition the curb upward. Mr. Martin asked for revised architectural plans to show the exit door on the corner. Mr. Caruso said he would look at moving the drive-through to the northeast 3-5'. Also, the architect was not present. Mr. Alampi advised they will have the interior

(WWZB 6/7/10)

floor plan with additional room to move. Mr. Oakes said the 5' buffer would make sense. There is still 10' for the bypass lane. Mr. Caruso had not analyzed that yet, as there may be impacts to the operational areas. Mr. Alampi would provide the architectural plans. There were no further questions of Mr. Caruso.

The matter was opened to the public for questions of Mr. Caruso. Mr. Wanner came forward and asked if the reversal of the drive-through would have any effect on Jefferson. Mr. Alampi advised Mr. Caruso was not the traffic engineer and directed his inquiry to the Traffic Impact Study, which Mr. Wanner was then given a copy of.

Mr. Alampi gave an overview, noting the matter would be continued at the 7/12/10 hearing, stating this applicant has no objection to Mr. Lydon acting as planner. The attorneys will research this issue. He believes Mr. Rutherford's research will disclose that Mr. Lydon is perfectly eligible to continue in the application. Mr. Martin asked for any recommendation or report be given in ample time in the event it is necessary to bring in another planner. It would be a huge undertaking, as they would have to listen to the tape, prepare the reports, etc., plus, Mr. Martin stated, there would be additional costs. Mr. Alampi said he did not disagree with the list of variances enumerated by Mr. Lydon. Mr. Martin acknowledged this was covered at the last meeting.

Mr. Alampi granted an extension of time through the next meeting, 7/12/10, and they would provide three additional exhibits and the architect's plan. Mr. Alampi asked on behalf of his client if the Board would have considered a vote this evening, but the response was the Board was not in the position to do so. The matter was carried to the 7/12/10 meeting with a time extension granted and new exhibits to be presented.

7. Retro Fitness, 25 Sullivan Street - Carried to 7/12/10 at the request of the applicant;

10. DISCUSSION: None

11. ADJOURNMENT - On motions, made seconded and carried, the meeting was adjourned at approx. 10:50 p.m.

(WWZB 6/7/10)

Respectfully submitted,

MARY R. VERDUCCI, Paralegal
Zoning Board Secretary
WWZB 6/7/10